



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. James Jura  
CEO and General Manager  
Associated Electric Cooperative, Inc.  
P.O. Box 754  
Springfield, Missouri 65801

RE: Notice of Violation under Section 113(a)(1) of the Clean Air Act


Dear Mr. Jura:

Enclosed is a Notice of Violation issued to Associated Electric Cooperative, Inc. under Section 113(a)(1) of the Clean Air Act, 42 U.S.C. § 7413(a)(1). In the NOV, the U. S. Environmental Protection Agency notifies AECEI of violations of pre-construction permitting and Title V requirements of the Clean Air Act and the Missouri State Implementation Plan at its Thomas Hill Energy Center.

This NOV does not constitute a waiver of the EPA's authority to pursue an enforcement action under Section 113 of the Act, or of state or local authority to pursue an enforcement action under applicable state and local statutes, for any violation addressed herein. The NOV does not affect AECEI's responsibility to comply with any applicable federal, state or local regulations. The EPA will consider its enforcement options under Section 113 of the Act in further addressing these matters.

If AECEI has any questions or wishes to discuss the violations identified in this NOV, please contact Eric Sturm, Air Permitting and Compliance Branch at (913) 551-7377, or Sarah LaBoda, Office of Regional Counsel, at (913) 551-7424.

Sincerely,

  
for Becky Weber  
Director  
Air and Waste Management Division



Enclosure

cc w/encl: Robert Martineau, Esq., Waller Lansden Dortch & Davis, LLP  
Patrick Baumhoer, Esq., Associated Electric Cooperative, Inc.  
Nicole Eby, Missouri Department of Natural Resources



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

**IN THE MATTER OF:**

Associated Electric Cooperative, Inc.

Proceedings Pursuant to Section 113  
of the Clean Air Act,  
42 U.S.C. § 7413

**NOTICE OF VIOLATION**

**NOTICE OF VIOLATION**

This Notice of Violation (NOV) is issued to Associated Electric Cooperative, Inc. (AECI), for violations of the Clean Air Act (CAA or Act) at its Thomas Hill Energy Center near Moberly, Missouri. Specifically, AECI has violated Title I of the CAA by failing to comply with the Prevention of Significant Deterioration (PSD) requirements of the CAA and the Missouri State Implementation Plan (SIP). AECI has also violated Title V of the CAA by failing to address the PSD provisions of the CAA as applicable requirements in its Title V permit for the Thomas Hill Energy Center.

This NOV is issued pursuant to Section 113 of the Act, as amended, 42 U.S.C. § 7413. The authority to issue this NOV has been delegated to the Regional Administrator of the U. S. Environmental Protection Agency (EPA) Region 7 and further re-delegated to the Director, Air and Waste Management Division, U.S. EPA, Region 7.

**STATUTORY AND REGULATORY BACKGROUND**

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

**A. The National Ambient Air Quality Standards.**

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of the EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires the EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, the EPA has identified sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), fine particulate matter (PM<sub>2.5</sub>), particulate matter (PM or PM<sub>10</sub>), and ozone as criteria pollutants, and has promulgated NAAQS for such pollutants. See 40 C.F.R. §§ 50.4, 50.5, 50.6, 50.7, 50.11, and 50.15.
4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an “attainment” area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a “nonattainment” area with respect to such pollutant.
5. An area that cannot be classified as either “attainment” or “nonattainment” with respect to a particular pollutant due to insufficient data is termed “unclassifiable” with respect to such pollutant.
6. At all times relevant to this NOV, Randolph County, Missouri, where the Thomas Hill Energy Center is located, has been classified as attainment or unclassifiable with respect to SO<sub>2</sub> and NO<sub>2</sub>.

#### B. The Prevention of Significant Deterioration Program

7. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the “PSD program.”
8. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable unless a permit has been issued that comports with the requirements of Section 165 and the facility employs the best available control technology (“BACT”) for each pollutant subject to regulation under the Act that is emitted from the facility.
9. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input to be “major emitting facilities.”

10. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines “construction” to include “modification” (as defined in Section 111(a) of the Act). “Modification” is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”

11. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a state implementation plan (SIP) that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

12. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by the EPA as part of its SIP. If a state does not have a PSD program that has been approved by the EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

13. On May 31, 1972, the EPA approved the initial state of Missouri SIP. This SIP did not include a PSD Program. Missouri later revised its regulations and submitted for approval 10 Code of State Regulations (C.S.R.) 10-6.060 to address PSD. This revision was approved by the EPA on June 22, 1982. Since then, the Missouri SIP has been amended and approved on February 10, 1986 (51 Fed. Reg. 4916); July 31, 1989 (54 Fed. Reg. 31524); March 5, 1991 (56 Fed. Reg. 9172); February 29, 1996 (61 Fed. Reg. 7714); and December 22, 1998 (63 Fed. Reg. 70665). On February 25, 2005, Missouri revised its regulations to incorporate by reference 40 C.F.R. § 52.21. The EPA approved this revision into the Missouri SIP on June 27, 2006.

14. The regulations appearing at 10 C.S.R. 10-6.060 were incorporated into and part of the Missouri SIP at the time of the major modifications alleged in this NOV. All citations to the PSD regulations herein refer to the provisions of the Missouri SIP as applicable at the time of the major modifications alleged herein.

15. 10 C.S.R. 10-6.060(1)(C) states that “No owner or operator shall commence construction or modification of any installation subject to this rule, begin operation after that construction or modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority under this rule.” This provision is also included in AECI’s operating permit for its Thomas Hill Energy Center.

16. 10 C.S.R. 10-6.060 applies to installations throughout Missouri with the potential to emit any pollutant in an amount equal to or greater than the *de minimis* levels. 10 C.S.R. 10-6.060(1)(B). The *de minimis* level of both sulfur dioxide and nitrogen dioxide is less than or equal to 40 tons per year. 10 C.S.R. 10-6.020(2)(D)4. and (3)(A) Table 1.

17. "Modification" is defined as any physical change, or change in method of operation of, a source operation or attendant air pollution control equipment which would cause an increase in potential emissions of any air pollutant emitted by the source operation. 10 C.S.R. 10-6.020(2)(M)10.

18. The regulations at 10 C.S.R. 10-6.060(6) state that an applicant for a permit to modify a stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 10 C.S.R. 10-6.060(6)(B).

19. Any owner or operator who constructs, modifies or operates an installation not in accordance with the application submitted and the permit issued, or any owner or operator of an installation who commences construction or modification after May 13, 1982, without meeting the requirements of this rule, is in violation of this rule. 10 C.S.R. 10-6.060(6)(E)3.

20. Applicants for permits for construction or major modification of installations which are in a category named in 10 C.S.R. 10-6.020(3)(B), Table 2 and have the potential to emit one hundred tons per year or more of any pollutant shall adhere to the requirements of 10 C.S.R. 10-6.060(8) in addition to the requirements of 10 C.S.R. 10-6.060(6). 10 C.S.R. 10-6.060(8)(A)1. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input are one of the categories named in 10 C.S.R. 10-6.020(3)(B), Table 2.

21. "Major modification" is defined as any physical change or change in the method of operation at an installation or in the attendant air pollution control equipment that would result in a significant net emissions increase of any pollutant. 10 C.S.R. 10-6.020(2)(M)3.

22. Prior to June 27, 2006, a net "emissions increase" with respect to any pollutant subject to regulation under the Act, means a condition when the increases in pollutant emissions at an installation exceed the decreases of the same pollutant. 10 C.S.R. 10-6.020(2)(N)2. In determining whether a net emissions increase has occurred, all creditable increases and decreases of actual emissions shall be included occurring at the installation since the most recent permit was issued to the installation pursuant to 10 C.S.R. 10-6.060(1)(C). *Id.* If no permit has been issued, then the source shall include all increase and decreases that have occurred using the criteria outlined in 10 C.S.R. 10-6.060(2)(N)2.A.(I)-(II) in determining whether a net emissions increase has occurred. *Id.*

23. "Significant" means a net emissions increase or potential to emit at a rate equal to or exceeding the *de minimis* levels or create an ambient air concentration at a level greater than those listed in 10 C.S.R. 10-6.060(11)(D), Table 4, or any emissions rate or net emissions increase associated with an installation subject to 10 C.S.R. 10-6.060 which would be constructed within 10 kilometers of a Class I area and have an air quality impact on the area equal to or greater than one microgram per cubic meter (1 ug/m<sup>3</sup>)(twenty-four hour average). 10 C.S.R. 10-6.020(2)(S)10.

24. Prior to June 27, 2006, any installation subject to 10 C.S.R. 10-6.060(8) shall apply best available control technology (BACT) for each pollutant that it would emit in a significant amount. In addition, each application for a permit for construction or major modification must include, among other things, an analysis of ambient air quality and the impact of the construction or major modification on air quality, visibility, soils and vegetation. 10 C.S.R. 10-6.060(8)(B), (C).

25. After June 27, 2006, 10 C.S.R. 10-6.060(8) incorporates by reference all of the subsections of 40 C.F.R. § 52.21, other than subsections (a), (q), (s), and (u).

- a. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to any “major stationary source” that intends to construct a “major modification” in an attainment or unclassifiable area. 40 C.F.R. § 52.21(i)(2).
- b. Under the PSD regulations, “major stationary source” is defined to include, *inter alia*, fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a).
- c. Under the PSD regulations, “major modification” is defined at 40 C.F.R. § 52.21(b)(2)(i) as any physical change or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act.
- d. Under the PSD regulations, “net emissions increase” means the amount by which the sum of the following exceeds zero: “[a]ny increase in actual emissions from a particular physical change or change in method of operation at a stationary source” and “[a]ny other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i).
- e. Under the PSD regulations; a “significant” net emissions increase means an increase in the rate of emissions that would equal or exceed any of the following rates for the following pollutants: 40 tons per year of NO<sub>x</sub>, and 40 tons per year of SO<sub>2</sub>. 40 C.F.R. § 52.21(b)(23)(i).
- f. The PSD regulations define “actual emissions” as the average rate, in tons per year, at which the unit “actually emitted the pollutant during a 24-month period which precedes the particular date” and which is representative of normal operation. 40 C.F.R. § 52.21(b)(21)(i)-(ii). In addition, for any emissions unit that “has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.” 40 C.F.R. § 52.21(b)(21)(iv).

- g. Under the PSD regulations, “construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit)” that “would result in a change in actual emissions.” 40 C.F.R. § 52.21(b)(8); *see also* 42 U.S.C. § 7479(2)(C) (“construction” includes the “modification” (as defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a)) of any source or facility).
- h. If a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21.
- i. A major stationary source subject to the requirements of paragraphs (j) through (r) must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. 40 C.F.R. § 52.21(j)-(r).
- j. No major stationary source to which the requirements of paragraphs (j) through (r) of 40 C.F.R. § 52.21 apply shall begin actual construction of a major modification without a permit which states that the stationary source or modification will meet those requirements (a “PSD permit”). 40 C.F.R. § 52.21(i)(1).
- k. Any owner or operator of a source or modification subject to 40 C.F.R. § 52.21 who constructs or operates a source not in accordance with a PSD application or commences construction without applying for and receiving approval thereunder is subject to an enforcement action. 40 C.F.R. § 52.21(r)(1).

### C. Title V Program

26. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. The EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. The EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

27. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

28. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

29. Missouri's program under subchapter V of the CAA was granted final approval on May 14, 1997. See 62 Fed. Reg. 26405. These regulations are currently codified at 10 C.S.R. 10-6.065 and are federally enforceable pursuant to Section 113(a)(3) and 10 C.S.R. 10-6.065(6)(C)2.
30. The regulations at 40 C.F.R. § 70.1(b) provide that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." See also 10 C.S.R. 10-6.065(3).
31. The regulations at 40 C.F.R. § 70.2 define "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ." See also 10 C.S.R. 10-6.020(2)(A)23.
32. The regulations at 40 C.F.R. § 70.7(b) provide that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. See also 10 C.S.R. 10-6.065(1)(D)1.
33. The regulations at 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. See also 10-6.065(6)(B)1.A(II).
34. The regulations at 40 C.F.R. § 70.5(b) provide that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information." See also 10 C.S.R. 10-6.065(6)(B)2.
35. The regulations at 10 C.S.R. 10-6.065(6)(C)3.E state that all operating permits must require the source to certify compliance with the terms and conditions of the permit to the EPA and MDNR on an annual basis.

### **FACTUAL BACKGROUND**

36. AECl is a Missouri corporation, with its headquarters located in Springfield, Missouri.
37. AECl is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
38. At all times relevant to this Notice, AECl was the owner and/or operator of the following facilities in Missouri: New Madrid Plant (located near Marston, in New Madrid County), and Thomas Hill Energy Center (located near Moberly, in Randolph County).
39. Both of these facilities have the potential to emit more than 100 tons per year each of nitrogen oxides, sulfur dioxide, and particulate matter. Each facility is also a fossil-fuel-fired

steam electric plant of more than 250 million British thermal units (BTU) per hour heat input. Therefore, each facility is a “major emitting facility” within the meaning of 42 U.S.C. § 7479(1) and a “major stationary source” within the meaning of 40 C.F.R. §§ 52.21(b)(1)(i)(a) and 51.165(a)(1)(iv)(A)(I). Each facility is also an installation subject to the requirements of 10 C.S.R. 10-6.060(6)

40. AECI’s Thomas Hill Energy Center consists of three units, each of which has a heat input greater than 250 million BTU per hour. The first unit began operations in 1966, and the subsequent units were added in 1969 and 1982. Between 1997 and 2008, various physical changes or changes in the method of operation were made at the Thomas Hill Energy Center. These changes include, but are not limited to:

Thomas Hill Unit 2 2006 Projects

- replaced primary superheater pendants
- replaced boiler floor

Thomas Hill Unit 2 2008 Projects

- replaced sections of primary superheater
- replaced cyclones
- replaced sections of reheater

Thomas Hill Unit 3 1997-1998 Projects

- replaced and redesigned reheater
- replaced and redesigned economizer
- upgraded boiler

41. The operating permit issued to AECI by the Missouri Department of Natural Resources for its Thomas Hill Energy Center requires that AECI comply with 10 C.S.R. 10-6.060; specifically, they state that AECI “shall not commence construction, modification, or major modification of any installation subject to this rule, begin operation after that construction, modification, or major modification, or begin operation of any installation which has been shut down longer than five (5) years without first obtaining a permit from the permitting authority.”

## **FINDING OF VIOLATIONS**

42. The activities described in Paragraph 40, are major modifications that caused a significant net emissions increase of SO<sub>2</sub>, NO<sub>x</sub>, PM, ozone, and/or PM<sub>2.5</sub> within the meaning of the CAA and 10 C.S.R. 10-6.060. AECI failed to apply for or obtain a PSD permit prior to commencing construction of such activities. AECI violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 10 C.S.R. 10-6.060 by commencing construction of, and continuing to operate, a major modification at the Thomas Hill Energy Center without applying for and obtaining a PSD permit. 42 U.S.C. § 7475(a); 10 C.S.R. 10-6.060; and 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1). AECI did not install BACT for the control of SO<sub>2</sub>, NO<sub>x</sub>, PM, ozone and/or PM<sub>2.5</sub> prior to commencing construction of such activities, and continues to operate this plant without BACT. AECI violated and continues to violate Section 165(a) of the

Act, 42 U.S.C. §§ 7475(a), and 10 C.S.R. 10-6.060 by failing to install and operate BACT for such pollutants. 42 U.S.C. §§ 7475(a); 10 C.S.R. 10-6.060.

43. AECI has failed to submit an accurate and complete Title V permit application for the Thomas Hill Energy Center with information pertaining to the modifications identified in Paragraph 40 and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install, and operate BACT for the control of SO<sub>2</sub>, NO<sub>x</sub>, PM, ozone and/or PM<sub>2.5</sub> at the plants. AECI also failed to supplement or correct the Title V permit applications for this plant in violation of Sections 502, 503, and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6, and 70.7(b); and the Missouri Title V provisions at 10 C.S.R. 10-6.065.

44. The activities described in Paragraph 40 are major modifications within the meaning of 10 C.S.R. 10-6.060, for which AECI commenced without first obtaining a permit from the permitting authority. By doing so, AECI violated the terms of its Title V permits for the Thomas Hill Energy Center.

45. Since 2005, AECI has also failed to comply with 10 C.S.R. 10-6.065(6)(C)3.E because it has erroneously certified that it is in compliance with “all of the federally enforceable terms and conditions contained in this permit.”

### ENFORCEMENT PROVISIONS

46. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Missouri SIP. *See also* 40 C.F.R. § 52.23.

47. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997, and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004, through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

48. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

### **PENALTY ASSESSMENT CRITERIA**

49. Section 113(e)(1) of the Act, as amended, 42 U.S.C. § 7413(e)(1), states that the court, in an action for assessment of civil or criminal penalties, shall, as appropriate in determining the amount of penalty to be assessed, take into consideration (i.e., in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

50. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2) allows the court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where the United States makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of the NOV, or a previously issued air pollution control agency NOV, or the previous NOV, and each and every day thereafter, until AECI establishes that continuous compliance has been achieved; except to the extent that AECI can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

### **OPPORTUNITY FOR CONFERENCE**

51. AECI may, upon request, confer with the EPA. The conference will enable AECI to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. AECI has the right to be represented by counsel. A request for a conference must be made within ten days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Sarah LaBoda  
Senior Assistant Regional Counsel  
U.S. EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
(913) 551-7424

52. By offering the opportunity for a conference or participating in one, the EPA does not waive or limit its right to any remedy available under the Act.

## DISCLOSURE INFORMATION


53. Certain companies may be required to disclose to the Securities and Exchange Commission (SEC) the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under federal, state or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company may be subject to the same.

54. The EPA is enclosing an Information Sheet entitled "U.S. EPA Small Business Resources" (EPA 300-F-99-004, September 1999), which identifies a variety of compliance assistance and other tools available to assist small businesses in complying with federal and state environmental laws.

## EFFECTIVE DATE

55. This NOV shall become effective immediately upon issuance.

6/14/2011  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
for Becky Weber  
Director  
Air and Waste Management Division

